

II. Claims 58-65 and 67, drawn to a process for coloring a keratin material or a method for artificially tanning and/or browning the skin and/or giving a healthy complexion, classified in class 424, subclass 59.

Office Action at page 2.

Applicants respectfully traverse the restriction requirement, as set forth above and on page 2 of the Office Action. However, to be fully responsive, Applicants elect, with traverse, the subject matter of Group I, comprising claims 1-57, 66 and 68-69.

The Examiner admits that “[i]nventions I and II are related as product and process of use.” *Id.* However, the Examiner asserts that the inventions are distinct because the composition of Invention I can be used in materially different processes of use. *Id.* Thus, the Examiner concludes that the inventions of Group I and Group II require a different field of search and they have acquired separate status in the art because of their recognized divergent subject matter. *Id.*

Applicants disagree and traverse for at least the following reasons. Applicants respectfully refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs the Examiner as follows:

If the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to independent and distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining Groups I and II together would constitute a serious burden. In particular, Applicants respectfully submit that examining a composition and a process of using the composition (i.e., Groups I and II) would not

impose a serious burden on the Examiner, since a search of the composition would overlap the search for the process given the classification (class 424). Additionally, Applicants submit no serious burden would exist in light of the requirement of rejoinder. See M.P.E.P. § 821.04. Accordingly, it is unclear what burden is on the Examiner to examine Group I and II together, and Applicants respectfully request withdrawal of the restriction requirement.

In addition, the Examiner requires election of a single disclosed species from each of the following groups:

- I. dye precursor
- II. catalyst (1)
- III. catalyst (2)
- IV. component (B) and/or component (C).

See Office Action at page 3.

The Examiner asserts that the election of component (B) and/or component (C) must identify which component is elected (i.e., either (B); or (C); or (B) and (C)). The Examiner further asserts that if component (B) is elected, a single disclosed species of at least one acidic composition must be elected, as well as a single disclosed species of packaging for component (B), and if component (C) is elected, a single disclosed species of at least one alkaline composition must be elected, as well as a single disclosed species of packaging for component (C). See *id.*

The Examiner further requires election of embodiments of the claimed invention in which (V) a solvent and/or packaging and/or form is present; or (VI) a solvent and/or packaging and/or form is not present. See *id.* If Applicants elect embodiments in which

a solvent and/or packaging and/or form is present, then the Examiner also requires Applicants to elect a single disclosed species of solvent and/or packaging and/or form for examination on the merits. See *id.* at pages 3-4.

Finally, if an embodiment wherein a specific form of the at least one coloring agent is present is elected, the Examiner requires election of a single disclosed species of form for the at least one coloring agent or a generic form not specifically claimed must be made. See *id.* at page 4.

Applicants respectfully traverse this election requirement as set forth on pages 2-5 of the Office Action. The Examiner's election requirement is overly restrictive and essentially requires Applicants to elect a specific coloring composition within the scope of the claimed invention. However, to be fully responsive, Applicants elect, with traverse, as a single disclosed species, a coloring agent component such that the dye precursor is chosen from flavanols, catalyst (1) is Mn(II) chloride, catalyst (2) is sodium hydrogenocarbonate, component (B) is lactic acid packaged as a spray, and component (C) is a natural alkaline mineral water packaged as a spray (election of components (B) and (C)). Applicants further elect embodiments of the invention in which the physiologically acceptable medium is water and the coloring component comprising the two components (A₁) and (A₂) is packaged in the form of a kit comprising two separate containers, wherein each container is packaged in a pump device without air intake. The claims encompassed by the elected species include claims 1-57, 66 and 68-69.

Applicants respectfully request that the full scope of the claimed invention continue to be examined in this application without restriction or election requirement. If the Examiner chooses to maintain the election of species requirement, Applicants

request the Examiner, if the elected species is found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, i.e., extending the search to a "reasonable" number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

In view of the foregoing remarks, Applicants respectfully submit that both the restriction and the election of species requirement are in error and request that the requirements be withdrawn.

If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, she is respectfully invited to contact Applicants' undersigned counsel at 202-408-4325.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 9, 2007

By: Jennifer Leach
Jennifer R. Leach
Reg. No. 54,257